



PURCHASING DIVISION

REQUEST FOR PROPOSAL #20/012IA Contracted Services for Teaching and Learning Center

Issued by: September 13, 2019

by:
Inga Ash
Purchasing Division
6300 Irvington Blvd.
Houston, TX 77022-5618
Phone: (713)696-2112 | Fax: (713)696-0720
URL: www.hcde-texas.org
Email: iash@hcde-texas.org

Submittal Deadline:

Tuesday, October 1, 2019 at 2:00 p.m. CT

If you will not be submitting a response please NO BID the proposal on the HCDE eBid System.

<https://hcdeebid.ionwave.net/Login.aspx>

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Items below represent components which comprise this bid/proposal package. Respondents are asked to review the package to be sure that all applicable parts are included. If any portion of the package is missing, please notify *Inga Ash* @ (713) 696-2112 immediately.

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PART 1.0 – NOTICE OF INTENTION

The Purchasing Division of the Harris County Department of Education (“HCDE” or the “Department”) is conducting this procurement to establish a contract. The Term of the prospective contract is for a period of five (5) years. The maximum duration of any contract resulting from this procurement is a total of five (5) years, running from the date of execution of the contract by the authorized representative of the Department. No contract shall be executed until it has been reviewed and approved by the Board of Trustees of the Department (“Board”) in a duly called and posted meeting of the Board. This contract can be accessed on an “as needed” basis from a list of contracts that have been competitively bid and awarded with qualified, high performance vendors based on the selection criteria set forth herein. Proposers are requested to submit a proposal offering their total line of available products and services that are commonly purchased by government entities, school districts and other public, not-for-profit agencies and organizations.

Product(s) considered for award shall equal or exceed the technical, environmental and performance standards and specifications as defined within this RFP and further described in the scope and specification section.

The good(s) or service(s) to be purchased under the awarded contract, if any, may be of indefinite delivery and indefinite quantity (IDIQ).

PART 2.0 – PROPOSAL REQUIREMENTS

Please read carefully this entire proposal document and specifications. Complete all forms and submit your bid with all appropriate attachments.

2.1 Request for Proposals (RFP) Documents

HCDE Purchasing Division documents are made available online via the HCDE eBid System to anyone who wishes to submit a proposal. However, it is the responsibility of the proposer submitting a proposal to make certain that the HCDE Purchasing Division has the appropriate company name, authorized representatives, and contact information on file for the purpose of receiving notices, changes, addenda or other critical information. The HCDE eBid System's website is <https://hcdeebid.ionwave.net/Login.aspx>

2.2 Tentative Time Table

HCDE anticipates following the time table listed below for this job:

Item	Activity	Date & Time
1	Job starts to advertise (1 st run)	September 13, 2019
2	Job advertised (2 nd run)	September 16, 2019
3	Pre-Proposal Meeting	N/A
4	Addenda (if any)	---
5	Deadline for submission of proposals (<i>See Part 4 – Instruction to Proposers – for detailed submission requirements</i>)	October 1, 2019 @ 2:00 p.m.
6	Extended Deadline (if any)	
7	Award Date	November 20, 2019

The table above is only an estimate and may vary.

2.3 Procurement Method

HCDE is utilizing the Request for Proposals (RFP) method of procurement in accordance with Texas Education Code Section 44.031(3) Purchasing Contracts, Request for Proposals for services other than construction services.

For information regarding the proposal process, contact the Purchasing Division at 713-696-2112

2.4 Requirements for Return of Proposal Responses

Respondents must submit proposals electronically using the HCDE eBid System by the established deadline (day and time). Please refer to the “Instructions to Proposers” section to ensure that you submit all required information.

The HCDE eBid System does not accept responses after the due date and time. Please note that if you begin responding to the bid request and do not click “submit” by the time the RFP is scheduled to close, your bid will not have been submitted.

2.5 Pre-Proposal Conference

N/A

2.6 Rights Reserved by HCDE and Restrictions on RFP Process

- a) HCDE reserves the right to cancel this solicitation in whole or in part by issuance of a revised or amended Request for Proposals.
- b) HCDE further reserves the right to award one or more contracts, in part or in whole, to a single or to multiple prospective vendors or proposers. The decision to award multiple contracts, award only one contract, or to make no awards rests solely with HCDE. HCDE may make multiple awards, and this fact should be taken

into consideration by each proposer.

- c) HCDE assumes no financial responsibility for any costs incurred by prospective vendors in developing and submitting a proposal or any amendments or addenda, participating in bid conferences, participating in any negotiation sessions or discussions, or any other costs incurred by proposers prior to award of a contract pursuant to this RFP.
- d) HCDE reserves the right to reject any and/or all proposals, to award contracts for individual products or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interests of the Department. HCDE further reserves the right to accept, reject, or negotiate modifications in any terms of a proposed vendor's proposal or any parts thereof. HCDE further reserves the right to waive any formalities or technicalities if deemed in the best interest of the Department. HCDE also reserves the right as sole judge of quality and equality.

2.7 Questions and Clarification

- a) Questions regarding the requirements specified in this solicitation may be sent thru the HCDE eBid System **no less than five (5) business days** before the proposals are due.
- b) HCDE will not answer verbal questions; any responses to a prospective vendor's questions will be posted on the HCDE eBid System.

PART 3.0 – INSTRUCTIONS TO PROPOSERS

This portion of the RFP includes instructions on the format proposers must follow in preparing and submitting their proposals. It further identifies how questions can be raised and will be addressed.

3.1 Compliance with Specifications

Proposers are required to respond to all requests identified in this RFP and indicate their acceptance or objection to the terms of the RFP and the terms of the Agreement. Any exceptions to the terms and conditions in the RFP or the Agreement must be clearly indicated in the proposer's Note to Buyer section of the proposer's eBid submitted proposal. Each proposer, by making its proposal, represents that the proposer has read and understands the RFP and the Agreement.

3.2 Required Proposal Format

All proposers are required to respond to this RFP using the HCDE eBid System. The forms included in the Attachment Packet must be completed, signed, scanned, and attached under "Response Attachments" in the eBid System. Please ensure that you respond to all Bid Attributes and Line Items in this Request for Proposal.

3.3 General Corporate and Contact Information

Proposers are required to attach all of the following in the "Response Attachments" section of the eBid site:

- Describe the company's official registered name and its principals.
- Provide a brief history of the company, including the year it was established.
- Provide the company's organizational chart.
- Provide the company's Dun & Bradstreet (D&B) number.
- Provide a description of the company's relevant market and the company's position within it.
- State whether the proposer or the proposer's ultimate parent company or majority owner: (A) has its principal place of business in this state; or (B) employs at least 500 persons in this state.
- Proposer agrees to provide HCDE with the following financial information if requested by HCDE at any point during the procurement process, including before or after contract award: If public, the proposer's income statement, balance sheet, and cash flow for the past three (3) years; if private, the proposer's audited financial statements for the past two years (if available). A proposer's failure to provide this financial information may impact the HCDE Administration's recommendation to the HCDE Board of Trustees for the award of the contract.

3.4 References

Provide at least three references of governmental entities (school districts preferred) that have purchased services, products, and/or related items from you in the last 3-4 years. References are to be provided under the "Bid Attributes" section in the HCDE eBid System. Please use the following format for all references:

- Company Name
- Address
- Contact Name
- Phone Number
- Email

3.5 Addendum

Any interpretations, corrections, additions, or changes to this RFP will be communicated to proposers by the issuance of an addendum. It is the responsibility of the proposer, prior to submitting the proposal, to determine whether an addendum was issued. All proposers shall comply with the requirements specified in any addendum issued by HCDE.

3.6 Disqualification

A proposer may be disqualified before or after the proposals are opened, upon evidence of collusion with the intent to defraud, or evidence of intent to perform other illegal activities for the purpose of obtaining an unfair competitive advantage.

3.7 Environmental Initiatives

HCDE is committed to reducing waste and promoting energy conservation. Toward that end, proposers responding to this solicitation are encouraged to provide their company's environmental policy and green initiative.

3.8 Interpretation

This solicitation represents the basis for any award and supersedes all prior offers, negotiations, exceptions and understandings (whether orally or in writing). Submitted proposals should be self-explanatory and should not require any clarification or additional information.

3.9 No Return of Proposals; Withdrawal of Proposals

Once submitted, HCDE will not return proposals to proposers. A proposal that has been submitted via HCDE's eBid system may be withdrawn prior to the deadline for submission of proposals.

3.10 Non-Collusion Statement

Proposers are required to certify a Non-Collusive Statement. Proposers are required to state the party submitting a proposal or bid, that such proposal or bid is genuine and not collusive or sham; that proposer has not colluded, conspired, connived or agreed, directly or indirectly, with an entity or person, to put in a sham proposal or bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price or of any other proposer, or to fix any overhead, profit or cost element of said proposal price, or of that of any other proposer, or to secure any advantage against HCDE or any person interested in the proposed contract, and that all statements in said proposal or bid are true.

3.11 Use by Other Entities

Pursuant to applicable law, including the Interlocal Cooperation Act Chapter 791 of the Texas Government Code), HCDE may permit other governmental entities to "piggy-back" onto an existing contract between HCDE and Vendor entered into as a result of this RFP. In the event that the Vendor's proposal becomes an awarded Agreement, the Vendor's proposal, including pricing information, may be provided to a requesting governmental entity desiring to establish separate, independent contracts with Vendor. **Vendor expressly agrees that HCDE may disclose Vendor's proposal, including, but not limited to, pricing information, to other governmental entities.** Governmental entities are authorized to enter into separate, independent contracts with Vendor that employ the same negotiated terms and conditions contained in an existing contract(s) between HCDE and Vendor. However, there is no obligation on either party to participate unless both parties agree. If another governmental entity chooses to utilize a contract established by this procurement solicitation and subsequent Agreement, contracts will be awarded individually by those governmental entities, and goods/services would be provided under the same contract pricing and purchasing terms established by this procurement solicitation. Any such separate, independent contract developed as a result of this procurement solicitation and/or the Agreement is exclusively between such other governmental entity and Vendor and shall have no effect or impact on HCDE or HCDE's contract with Vendor. It is expressly understood that HCDE shall in no way be liable for the obligations of any other governmental entity contracting with Vendor pursuant to this section.

3.12 Preferences

HCDE may apply applicable preferences for Texas resident proposers in the event of a tie bid. Preferences must be explicitly claimed by proposer and may not be applicable in procurements and/or contracts involving federal funds unless the procurement and/or contract involves unprocessed locally grown or locally raised agricultural products for use by HCDE in a Child Nutrition Program. See Texas Government Code §§ 2252.001 - .004; 2 C.F.R. § 200.319.

3.13 Responsible Vendor

A responsible vendor is a vendor who has adequate financial resources (or the ability to obtain such

resources), can comply with the delivery requirements, and is a qualified and established firm regularly engaged in the type of business that provides the items listed herein.

3.14 Responsive Proposal

Proposals shall be deemed responsive if they comply with all material and administrative aspects of this solicitation.

3.15 Similar Products

Whenever an article or material is defined by HCDE in this solicitation by describing a proprietary product or by using the name of a manufacturer or brand name, the term “or equal” if not inserted shall be implied (as applicable). The specified article or material shall be understood as indicating type, function, minimum standard of design, efficiency and quality desired and shall not be construed as to exclude other manufactured products or comparable quality, design and efficiency (as applicable).

3.16 HCDE is tax-exempt

HCDE is tax-exempt. Proposal prices should not include taxes.

3.17 Sole Source

In order to become a Sole Source Vendor, a proposer must meet the requirements of Texas Education Code § 44.031 (j) Sole Source, as described below.

Selected purchases may be exempt from competitive procurement if they meet the established criteria for a sole source purchase:

- Identification and confirmation that competition in providing the item or product to be purchased is precluded by the existence of a patent, copyright, secret process or monopoly
- Identification and confirmation that the product is a film, manuscript, book, utility service (including electricity, gas, or water), or a captive replacement part or component for equipment
- Sole source does not apply to mainframe data-processing equipment and peripheral attachments with a single item purchase price in excess of \$15,000.

It is incumbent upon the Department to obtain and retain documents from the proposer which clearly delineate the reasons that qualify the purchase to be made on a sole source basis. In order to do business with HCDE as a Sole Source Vendor, HCDE must receive a notarized Sole Source Affidavit along with proof of your company qualifying as a sole source.

Please mail this information to:

Harris County Department of Education
Attn: Purchasing Office
6300 Irvington Blvd.
Houston, Texas 77022-5618

HCDE reserves the right to decide if your company is a qualified Sole Source Vendor.

3.18 Conflict of Interest (CIQ Form – must be filled out and attached to proposal in the Response Attachment section of the HCDE eBid System) – See Attachment Packet

EDGAR Conflict of Interest Requirements

In accordance with federal EDGAR requirements, 2 CFR § 318(c)(1), no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of HCDE may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, through HCDE’s written procedures, HCDE

has set a de minimis amount of less than \$50 per year for items that are unsolicited and of minimal value and promotional items.

Violations of this standard by an employee will be reported to the Superintendent's Office and addressed through HCDE's personnel policies. Violations of this standard by an officer or the Superintendent shall be addressed to the **Board President and addressed through HCDE Board policies.**

- 3.19 Certificate of Interested Parties (Form 1295 – must be filled out electronically with the Texas Ethics Commission's online filing application and attached to proposal in the Response Attachment section of the HCDE eBid System) – See Attachment Packet**

PART 4.0 – SCOPE & SPECIFICATIONS

4.1 Request for Proposals Defined

The intention of this Request for Proposals (RFP) is to solicit proposals for *Contracted Services for Professional Development, Speakers and Trainers for Harris County Department of Education's Instructional Support Services Division.*

HCDE is utilizing the Request for Proposals (RFP) method for the procurement of this service in accordance with Texas Education Code Section 44.031 Purchasing of Contracts, Item (3) Request for Proposals.

For information regarding the proposal process, contact *Inga Ash* of the Purchasing Division at 713-696-2112.

Interested proposers should respond to this RFP and submit proposals online at the HCDE eBid System site. This site can be accessed by logging into <https://hcdeebid.ionwave.net/Login.aspx>

4.2 Scope of Services

The Harris County Department of Education is currently accepting proposals from service providers qualified to provide Contracted Services in the areas of Professional Development, Speaking Engagements and Training for HCDE's various instructional support divisions.

HCDE will engage the contractor(s) based on HCDE's needs. HCDE may make multiple awards and engage in contract(s) as needed to meet client and division needs.

These services are the services of either an individual or company (hereby referred to as "Independent Contractor"), who renders services to the Department on a short or infrequent term, on a fee or per diem basis, and does not involve the traditional relationship of employer and employee. This RFP expressly excludes professional services, as defined by statute, including, but not limited to, Texas Education Code Section 44.031(f) and/or Texas Government Code Section 2254.002(2), including, without limitation, architecture and professional engineering services.

This RFP is not intended to solicit proposals for providers who provide direct therapy services to students like physical and/or occupational therapy; rather, this RFP is intended to solicit proposals for providers who provide contracting services for professional development and consultation services.

Related materials commonly sold by the Independent Contractor to its customers and that are necessary or recommended for use in conjunction with the services offered by the Independent Contractor are also to be a part of this solicitation, in accordance with the requirements and/or restrictions referenced within this RFP.

4.3 Specifications

It is the intention of HCDE to establish one or more contract(s) with highly qualified Vendor(s) for *TLC*. Vendor(s) shall, at the request of HCDE, provide these products and/or covered services under the terms of this RFP and the Contract set forth in Section **7.0 Contract Terms and Conditions**

a) Scope of Work:

Contracted services to be considered in this solicitation may consist of, but not limited to:

1. State of Texas Assessments of Academic Readiness (STAAR) Based Training

Professional development training aimed at building the capacity of teachers and teacher-leaders to improve student performance.

2. **Neuroscience Presentation for Educators**
3. **Professional Development for teachers** in various curricular areas including, but not limited to: English Language Arts, Writing, Math, Science, Social Studies, ELL services, Special populations(dyslexia, gifted and talented, autism, learning disabled, etc.), cultural responsiveness and awareness, digital learning technologies, applications and online learning for the classroom, critical thinking, early childhood curricular topics, response to intervention, restorative discipline & classroom management, professional learning communities, gender identity development and inclusion, working with underserved and other challenging populations, art.
4. **Professional development for administrators** (all levels) in various areas including, but not limited to: Test and data analysis, data teams, cultural climates, team building and development, achievement equity, leadership, coaching, response to intervention, flexible grouping, closing achievement gaps, improving parental involvement, turnaround school leadership, deconstructing the STAAR, working with multilingual populations, systems based leadership, technology based leadership, assessing school climates. Ethical legal compliance (handling contracts non-renewals) etc. Legal and Legislative best practices for schools. Budget practices for School Administrator Federal and local Budget.

b) **Qualifications/Experience**

- 1.Bachelor degree, or Master's Degree or Doctoral degree as appropriate related to the discipline of interest.
- 2.Certification as appropriate related to the discipline of interest.
- 3.Minimum of 5 years of experience in public schools with evidential history documenting expertise in the area of interest

The Department reserves the right to determine if a specialized service is acceptable and within the scope of services covered by this solicitation.

PART 5.0 – EVALUATION AND AWARD OF PROPOSALS

In accordance with applicable laws, rules, and regulations for public purchasing, award(s) will be made to the responsible proposer(s) whose proposal(s) is/are determined, after evaluation by the HCDE Procurement Division, to be the best value to HCDE. To qualify for evaluation, a proposal must have been submitted on time and must materially satisfy all mandatory requirements identified in this document.

5.1 Evaluation Criteria

A committee selected by HCDE will review and evaluate all proposals and make a recommendation to the HCDE Board of Trustees. HCDE will base a recommendation for contract award on the following factors, in accordance with Texas Education Code § 44.031:

Evaluation Factors	Weighted Value
1. Price	30 Points
2. Reputation of Vendor and of Vendor's goods and/or services	20 Points
3. Quality of Vendor's goods and/or services	30 Points
4. Extent to which the goods and/or services meet HCDE's needs	15 Points
5. Vendor's past relationship with HCDE	5 Points
6. Impact on the ability of HCDE to comply with laws and rules relating to HUBs	0 Points
7. Total long-term cost to HCDE to acquire Vendor's goods and/or services	0 Points
8. For a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the Vendor or the Vendor's ultimate parent company or majority owner: (A) has its principal place of business in this state; or (B) employs at least 500 persons in this state	0 Points
9. Other	0 Points
	100 Points

5.2 Awards

Awards will be made to the successful proposer(s) for the total line of products and services submitted. Awards will be based on the criteria set forth within this document. HCDE reserves the right to award contracts to multiple vendors if these vendors offer items that are unique and have value to HCDE. HCDE shall comply with the Texas Public Information Act in the event HCDE receives an open records request for information relating to proposals submitted in response to this RFP.

5.3 Competitive Range

It may be necessary for HCDE to establish a competitive range of acceptable proposals as part of the evaluation process. Proposals not in the competitive range are unacceptable and do not receive further award consideration.

5.4 Estimated Quantities

HCDE makes no guarantee or commitment of any kind concerning quantities that will actually be purchased. HCDE makes no guarantee or commitment of any kind regarding usage of any contracts resulting from this solicitation.

5.5 Inspection & Acceptance

Awarded vendor(s) shall deliver the goods or services procured on this contract to the HCDE division issuing a Purchase Order. If delivery is not or cannot be made within proper time period, the awarded vendor must receive authorization from the issuing HCDE division for the delayed delivery. If defective or incorrect goods

are delivered, HCDE may make the determination, in its sole discretion, to return the goods to the vendor at no cost to HCDE. The vendor agrees to pay all shipping and handling costs for any such return shipment. The vendor also shall be responsible for arranging the return of the defective or incorrect goods.

5.6 Minority & Women's Business Enterprise (MWBE), Historically Underutilized Business (HUB), and Small Business Enterprise (SBE) participation

HCDE encourages the use of HUB, MWBE, and SBE both as prime and subcontractors. However, these entities must meet the same minimum standards and requirements as the prime contractor. It will be the responsibility of the prime contractor to pre-qualify any subcontractors offered as HUB, MWBE and SBE participants. Proposers shall indicate on their submitted proposals whether or not they are a HUB, MWBE, or SBE vendor and with whom they are certified, e.g., State, City, Federal.

When federal funds are expended by HCDE or any CP member, Vendor is required to take all affirmative steps set forth in 2 CFR 200.321 to solicit and reach out to small, minority and women owned firms for any subcontracting opportunities, including:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

5.7 Formation of Contract (Execution of Offer)

A response to this solicitation is an offer to contract with HCDE based upon the terms, conditions, scope of work, and specifications contained in this procurement solicitation. A solicitation/proposal does not become a contract unless and until it is accepted by HCDE after approval by the HCDE Board of Trustees. A contract is formed when either HCDE's Superintendent or Assistant Superintendent for Business Services signs the Execution of Offer form. The proposer must submit a signed Execution of Offer Form in the Response Attachment section of the HCDE eBid system, thus eliminating the need for the formal signing of a separate contract.

5.8 Non-Exclusive Contract

Any contract resulting from this solicitation is non-exclusive and shall be awarded with the understanding and agreement that it is for the sole convenience of HCDE. HCDE is free to have multiple contracts for the awarded goods and services and may initiate other procurement solicitations or purchasing activity with other vendors at any time, in HCDE's sole discretion.

5.9 Pricing

HCDE requires that the pricing submitted in proposals be offered as a quantity one price. HCDE may request the awarded vendor(s) to provide discounts or other adjustments to the quantity one price for larger orders, on a per-purchase order basis. If discounts or quantity prices are offered by an awarded vendor, the vendor must also offer the same reductions in pricing to be available for orders of similar size.

PART 6.0 – FINANCIAL OFFER & QUESTIONNAIRE

Proposers must respond to all questions and identify all costs, fees, or charges for which HCDE may be billed under the “Bid Attributes” and “Bid Line Items” sections in the HCDE eBid System. Costs not indicated in proposals will not be paid. Proposers are to provide written documentation for any exceptions.

Note: This page is for reference only. All pricing must be submitted in the HCDE eBid system “Line Items” section.

6.1 Implementation pricing for HCDE

(a) IF you are to be paid PER HOUR, please give your HOURLY RATE. (Note: This is the maximum rate that HCDE will pay for your services. Quotes may be requested at the time services are needed).

\$ _____

Service Description: Describe the service(s) that apply to this hourly rate:

Minimum Hours: If you would bill for a minimum number of hours, then please indicate the minimum number of hours you would bill the Department for. If you would not charge for a minimum number of hours, then please indicate “Not Applicable”:

(b) IF you are to be paid PER DAY, please give your DAILY RATE.

\$ _____

Service Description: Describe the service(s) that apply to this daily rate:

Number of Hours in a Work Day: HCDE would normally consider 8-hours of work to be a full work day. If your daily rate would consist of more or fewer hours, please indicate the number of hours in a full work day.

(c) IF you are to be paid a ONE TIME, LUMP SUM payment, please give your rate.

\$ _____

Service Description: Describe the service(s) you would bill based on a one-time, lump sum payment:

(d) IF you are to be paid PER EVENT, please give your PER-EVENT RATE (Examples of this type of service may include, but not be limited to: speaker at School Finance Council).

\$ _____

Service Description: Describe the service(s) you would bill per event, if applicable:

(e) Percent discount on any materials you would sell in support of the services to be offered with this solicitation. If you are not offering a specific discount on materials, and you have provided an attachment with your price list or other form of pricing structure, then please indicate such. (Note: this is the minimum discount that would apply for the materials you describe)

% _____

Indicate what type of materials apply to the percent discount offered:

(f) Will the Independent Contractor require reimbursement for costs (e.g. air travel, lodging, per diem, handouts, and all other Department authorized expenses) associated with the services provided, OR are such costs included within the services fees? (Check applicable box)

- Independent Contractor will require reimbursement for costs associated with the services provided
- Costs associated with the services provided are included in Independent Contractor’s fee(s)

PART 7.0 – GENERAL TERMS AND CONDITIONS

The words “bids,” “requests for proposals,” “quotes,” “RFPs,” “solicitation,” “procurement,” and their derivatives may be used interchangeably in these terms and conditions. These terms and conditions apply to all bids, requests for proposals, quotes, competitive sealed proposals, and other procurement solicitations to which they are attached. The term “Vendor” means each awarded vendor chosen by HCDE.

These General Terms and Conditions are part of the final contract in each commodity and/or service contract and are part of the terms and conditions of each purchase order or other bid/proposal forms issued in connection with this solicitation.

Proposers are responsible for identifying any exceptions to these terms and conditions. **ANY EXCEPTIONS MUST BE NOTED IN THE “SUPPLIER NOTES TO BUYER SECTION” OF THE EBID SYSTEM.**

Proposals that are qualified with conditional clauses, items not called for, or other irregularities may be considered non-responsive by HCDE and eliminated from further consideration by HCDE.

This Agreement is entered into between Harris County Department of Education (“HCDE”) and Vendor, having submitted a proposal in response to a procurement solicitation issued by HCDE and whose proposal has been accepted and awarded by HCDE. In consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HCDE and Vendor, intending to be legally bound, and subject to the terms, conditions, and provisions of this Agreement, agree as follows:

7.1 Agreement Terms; Amendment

The terms of this Agreement shall govern all procurements conducted hereunder. No pre-published terms on the Vendor’s order acknowledgments, invoices, or other forms shall have any force or effect. Further, no amendment of this Agreement shall be permitted unless first approved in writing by HCDE, and no such amendments shall have any effect unless and until a written amendment to this Agreement is executed by HCDE’s Superintendent or its Assistant Superintendent for Business Services (or their designees) after any necessary approvals have been obtained from the HCDE Board of Trustees.

7.2 Assignment of Agreement

Vendor may not assign this Agreement or any of its rights, duties, or obligations hereunder without the prior written approval of HCDE. Any attempted assignment of this Agreement by Vendor shall be null and void. Any purchase or work order made as a result of this Agreement may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of HCDE. Vendor is required to notify HCDE when any material change in operations occurs, including but not limited to, changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

7.3 Captions

The captions herein are for convenience and identification purposes only, are not an integral part hereof, and are not to be considered in the interpretation of any part hereof.

7.4 Catalog Discounts

In the event of a catalog discount type proposal, Vendor may be allowed to make additions and/or deletions from Vendor’s offerings on an annual basis during the Agreement renewal period, in HCDE’s sole discretion, provided the item(s) substituted are of a like quality and category. These changes will be compliant with the format of Vendor’s original proposal (i.e. manufacturer name, product category, or entire catalog discount). HCDE will send notification to Vendor(s) seeking any additions and/or deletions, and Vendor will return these proposed changes on company letterhead within the given timeframe. If HCDE, in its sole discretion, accepts Vendor’s proposed changes, such changes will remain in effect for the entire year until the next renewal period.

7.5 Certifications. Vendor hereby certifies that it is not a company identified on the Texas Comptroller’s list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any (the “Vendor Companies”),

boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term “boycott” shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

Vendor certifies and agrees that it shall not assist an employee, contractor, or agent of HCDE or of any other school district in obtaining a new job if the Vendor knows, or has probable cause to believe, that the individual engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personnel file does not violate this prohibition. See HCDE Policy CJ (Legal) and (Local).

7.6 Compliance with Laws

Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers’ compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations, the Davis-Bacon Act (40 U.S.C. § 276a / 29 CFR Part 5), the Copeland “Anti-Kickback” Act (18 U.S.C. § 874 / 29 CFR Part 5), the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60), the McNamara-O’Hara Service Contract Act (41 U.S.C. 351), Section 306 of the Clean Air Act (42 U.S.C. § 1857h, Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15), the Contract Work Hours and Safety Act (40 U.S.C. § 3701-3708; 29 C.F.R. Part 5), the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), the Education Department General Administrative Regulations, 2 C.F.R. Parts 200 and 3474, and 34 C.F.R. Parts 75-77 and 81 (“EDGAR”), mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871), and all applicable requirements and regulations, including those related to reporting, patent rights, copyrights, data rights and those mandated by federal agencies making awards of federal funds to HCDE. Vendor understands that Vendor is ineligible to receive a contract award with HCDE if Vendor or its principal(s) is listed on the government wide exclusions in the System for Award Management (Debarment and Suspension Orders Executive Orders 12549 and 12689) or is 30 days or more delinquent in paying child support (Tex. Fam. Code § 231.006). For the entire duration of this Contract, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. Vendor must comply with all state and local building code requirements unless otherwise specifically provided in the HCDE’s Purchase Order, and Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site. When required or requested by HCDE, Vendor shall furnish HCDE with satisfactory proof of Vendor’s compliance with this provision.

7.7 Confidentiality

Vendor and HCDE agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor and HCDE understand that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, governs the privacy and security of educational records and information and agree to abide by FERPA rules and regulations, as applicable. Vendor also acknowledges that HCDE is subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability HCDE, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Agreement or otherwise created, assembled, maintained, or held by Vendor and determined by HCDE, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

7.8 Contract Term

The initial term of the Agreement is for a period of five (5) years. Consequently, the total term of the Agreement may be for a period of five (5) years. The phrase “Term” in this Agreement shall mean the then-current Term of the Agreement, whether the initial term or a renewal term.

7.9 Criminal History Review (SB 9 Contractor Certification: Contractor Employees Form; SB 9 Contractor Certification: Subcontractor Form – must be filled out and attached to proposal in the Response Attachment section, if applicable)

Prior to commencing any work under the Agreement, if Vendor contracts with HCDE to provide services,

Vendor must certify, on the form provided herein, that for each covered employee of Vendor who will have direct contact with students, Vendor has obtained, as required by Texas Education Code Section 22.0834: (a) state criminal history record information from a law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) for each covered employee of Vendor employed before January 1, 2008; and (b) national criminal history record information for each employee of Vendor employed on or after January 1, 2008. Vendor must also obtain similar certifications of compliance with Texas Education Code Chapter 22's requirements from any subcontractors on the form provided herein. Covered employees with disqualifying criminal history are prohibited from serving at HCDE; Vendor and any subcontracting entity may not permit a covered employee to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under Tex. Educ. Code § 22.085(a) (i.e., Title 5 felony or an offense requiring registration as a sex offender and victim was under 18 years of age or was enrolled in a public school at the time the offense occurred). Covered employees do not include employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work if: (1) the public work does not involve the construction, alteration, or repair of an instructional facility as defined by Texas Education Code Section 46.001; (2) the employee's duties will be completed more than seven (7) days before a new instructional facility will be used for instruction; or (3) for an existing instructional facility, the work area contains sanitary facilities separated from all areas used by students by a fence at least six (6) feet high, and the Contractor adopts, informs employees of, and enforces a policy prohibiting employees and any subcontractor's employees from interacting with students or entering areas used by students. Tex. Educ. Code §§ 22.0834(a-1), .08341. The criminal history record information review obligation applies if Vendor contracts with HCDE to provide services; it does not apply to a contract for the purchase of goods or real estate.

7.10 Customer Reference List

Vendor agrees to submit a customer reference list upon request by HCDE.

7.11 Customer support

Vendor shall provide timely and accurate technical advice and sales support to HCDE and HCDE staff. Vendor shall respond to requests for customer support within one (1) business day after receipt of the request. Vendor shall provide training to HCDE staff regarding products and/or services supplied by Vendor, at no additional charge, if requested by HCDE.

7.12 Entire Agreement

This Agreement, the procurement solicitation issued by HCDE, and Vendor's proposal submitted in response to HCDE's procurement solicitation, and the attached and incorporated addendum or exhibits, if any, contain the entire agreement of the parties relative to the purpose(s) of the Agreement and supercede any other representations, agreements, arrangements, negotiations, or understanding, oral or written, between the parties to this Agreement. In the event of a conflict between this Agreement and the procurement solicitation issued by HCDE or Vendor's proposal submitted in response to HCDE's procurement solicitation, this Agreement shall control. In the event of a conflict between the procurement solicitation issued by HCDE and Vendor's proposal submitted in response to HCDE's procurement solicitation, HCDE's procurement solicitation shall control. This Agreement supersedes any conflicting terms and conditions on any purchase or work orders, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Vendor after the Effective Date of this Agreement.

7.13 Equal Opportunity

It is the policy of HCDE not to discriminate on the basis of race, color, National origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Agreement shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Agreement.

7.14 Force Majeure

Neither HCDE or Vendor shall be deemed to have breached any provision of this Agreement as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond such party's control.

The parties to this Agreement are required to use due caution and preventive measures to protect against the effects of force majeure, and the burden of proving that a force majeure event has occurred shall rest on the party seeking relief under this provision. The party seeking relief due to force majeure is required to promptly notify the other party in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by a force majeure event have been removed, provided the Agreement has not been terminated. Delay or failure of performance, by either party to this Agreement, caused solely by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. Neither party shall have any claim for damages against the other resulting from delays caused solely by force majeure. Notwithstanding any other provision of this Agreement, in the event the Vendor's performance of its obligations under this Agreement is delayed or stopped by a force majeure event, HCDE shall have the option to terminate this Agreement. This section shall not be interpreted as to limit or otherwise modify any of HCDE's contractual, legal, or equitable rights.

7.15 Governing Law and Venue

The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this Agreement. The mandatory, exclusive jurisdiction for any dispute under this Agreement is in the state and federal courts located in Houston, Harris County, Texas.

7.16 HCDE Property

In the event of loss, damage, or destruction of any property owned by or loaned by HCDE that is caused by Vendor or Vendor's representative, agent, employee, or contractor, Vendor shall indemnify HCDE and pay to HCDE the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of Vendor's receipt of written notice of HCDE's determination of the amount due. If Vendor fails to make timely payment, HCDE may obtain such money from Vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Vendor by HCDE.

7.17 Indemnification

VENDOR SHALL INDEMNIFY AND HOLD HCDE HARMLESS FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM THE ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY ITEM VENDOR IS REQUIRED TO DELIVER. Vendor's obligations under this clause shall survive acceptance and payment by HCDE.

7.18 Insurance

Vendor is required to provide HCDE with copies of certificates of insurance, naming HCDE as an additional insured, for Texas Workman's Compensation and General Liability Insurance. Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to HCDE prior to commencement of any work under this Agreement. The insurance company insuring Vendor shall be licensed in the State of Texas and shall be acceptable to HCDE. Vendor shall give HCDE a minimum of ten (10) days' notice prior to any modifications or cancellation of said policies of insurance. Vendor shall require all subcontractors performing any work under or relating to this Agreement to maintain coverage as specified below.

Minimum Insurance Requirements:

- Vendor shall, at all times during the Term of this Agreement, maintain insurance coverage with not less than the type and requirements shown below. Such insurance is to be provided at the sole cost of Vendor.

These requirements do not establish limits of Vendor's liability.

- All policies of insurance shall waive all rights of subrogation against HCDE, its officers, employees, and agents.
- Upon request, certified copies of original insurance policies shall be furnished to HCDE.
- HCDE shall be named as an "additional insured" on all insurance policies.
- HCDE reserves the right to require additional insurance should HCDE deem additional insurance necessary, in HCDE's sole discretion.
 - A. Workers' Compensation (with Waiver of subrogation to HCDE) Employer's Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements.
 - B. Statutory, and Bodily Injury by Accident: \$100,000 each employee. Bodily Injury by Disease: \$500,000, policy limit \$100,000 each employee. Commercial General Liability Occurrence Form including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability, Personal and Advertising Injury Liability and where the exposure exists, coverage for watercraft, blasting collapse, and explosions, blowout, catering and underground damage.
 - \$300,000 each occurrence Limit Bodily Injury and Property Damage combined
 - \$300,000 Products-Completed Operations Aggregate Limit \$500,000 per Job Aggregate
 - \$300,000 Personal and Advertising Injury Limit
 - C. Automobile Liability Coverage
 - \$300,000 Combined Liability Limits Bodily Injury and Property Damage Combined.

7.19 Interpretation

Vendor agrees that the normal rules of construction that require that any ambiguities in this Agreement are to be construed against the drafter shall not be employed in the interpretation of this Agreement.

7.20 Invoices; Payments

Invoices shall be directed to HCDE's Accounts Payable Department. All invoices shall be itemized to include the type of good(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during HCDE's fiscal year in which the good(s) and/or services are purchased. In accordance with Texas Government Code § 2251.021, payments are due to Vendor within forty-five (45) days after the later of the following: (1) the date HCDE receives the goods under the Agreement; (2) the date the performance of the service under the Agreement is completed; or (3) the date HCDE receives an invoice for the goods or service. Vendor agrees to pay any subcontractors, if any, the appropriate share of the payment received from HCDE not later than the tenth (10th) day after the date Vendor receives the payment from HCDE. The exceptions to payments made by HCDE and/or Vendor listed in Texas Government Code § 2251.002 shall apply to this Agreement.

7.21 IRS W-9

In order to receive payment under this Agreement, Vendor shall have a current I.R.S. W-9 Form on file with HCDE.

7.22 Multiple Contract Awards; Non-Exclusivity

HCDE reserves the right to award multiple contracts for each commodity category. Commodity categories are established at the sole discretion of HCDE. Nothing in this Agreement may be construed to imply that Vendor has the exclusive right to provide products and/or services to HCDE. During the Term of this Agreement, HCDE reserves the right to use all available resources to procure other products and/or services as needed and doing so will not violate any rights of Vendor.

7.23 New Products

New products that meet the specifications detailed in the solicitation may be added to this Agreement, with prior written approval from HCDE. Pricing of any new products shall be equivalent to the percentage discount or proposed prices for other similar products. Vendor may replace or add products to an existing contract if: the replacing products are equal to or superior to the original products offered; are discounted in a similar or to a greater degree; and the products meet the requirements of the original solicitation. No products may be

added to avoid competitive procurement procedures. HCDE may reject any proposed additions, without cause, in its sole discretion.

7.24 No Substitution

Any order issued pursuant to this Agreement shall conform to the specifications and descriptions identified in this Agreement and in the solicitation. Unless otherwise agreed to in advance by HCDE, Vendor will not deliver substitutes without prior authorization from HCDE.

7.25 No Agency or Endorsements

HCDE and Vendor are independent contractors and have no power or authority to assume or create any obligation or responsibility on behalf of the other party. This Agreement shall not be construed or deemed an endorsement of a specific company or product. It is the intention of the parties that Vendor is independent of HCDE and is not an employee, agent, joint venturer, or partner of HCDE, and nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between HCDE and Vendor or HCDE and any of Vendor's agents. Vendor agrees that HCDE has no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

7.26 Non-Appropriation Clause

Renewal of this Agreement, if any, will be in accordance with Texas Local Government Code § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Agreement or obligation imposed on HCDE by this Agreement, HCDE shall have the right to terminate this Agreement without default or liability to Vendor resulting from such termination, effective as of the expiration of each budget period of HCDE if it is determined by HCDE, in HCDE's sole discretion, that there are insufficient funds to extend this Agreement. The parties agree that this Agreement is a commitment of HCDE's current revenue only.

7.27 Notice

Any notice provided under the terms of this Agreement by either party to the other shall be in writing and shall be given by hand-delivery or by certified or registered mail, return receipt requested. Notice shall be sufficient if made or addressed to the address listed in the signature line of this Agreement. Notice shall be deemed effective upon receipt. Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified or registered mail, return receipt requested.

7.28 Penalties

If Vendor is unable to provide the goods or services at the prices quoted in Vendor's proposal or if Vendor fails to fulfill or abide by the terms and conditions of the Agreement, HCDE may take the following action(s), in HCDE's sole discretion, and Vendor agrees to comply with HCDE's action(s):

- (a) insist that Vendor honor the quoted price(s) specified in Vendor's proposal;
- (b) have Vendor pay the difference between Vendor's price and the price of the next acceptable proposal (as determined by HCDE);
- (c) have Vendor pay the difference between Vendor's price and the actual purchase price of the good or service on the open market; and/or
- (d) recommend to HCDE's Board of Trustees that Vendor no longer be given the opportunity to submit a proposal to HCDE and/or that this Agreement be terminated.

7.29 Performance

Vendor agrees to use best efforts to provide the good(s) and/or service(s) subject to this Agreement.

7.30 Performance and Payment Bonds

Vendor agrees to provide performance bonds and/or payment bonds as required by Texas law on specified contracts and/or projects, as applicable. HCDE will include the performance and payment bonds requirement in the specifications section of any solicitation if performance bonds and/or payment bonds are required.

7.31 Prevailing Wage Rates

Vendor and all subcontractors of Vendor shall comply with all laws regarding wage rates including, but not limited to, Texas Government Code Chapter 2258 and any related federal requirements applicable to this

Agreement and to this solicitation by HCDE.

7.32 Prices

All prices in Vendor's proposal shall be firm for the Term of the Agreement. All price changes shall be presented to HCDE for acceptance or rejection by HCDE, in its sole discretion, using the same format as was accepted in Vendor's original proposal; all price changes for goods and/or services provided under this Agreement must be approved, in writing, by HCDE prior to taking effect. The following documentation shall be provided to support a request for a price change: justification for change/increase; terms and conditions; market conditions; manufacturers/distributors' impact (if any).

7.33 Quantities

Because all commodities will be provided on an "as needed" basis, HCDE makes no representation either orally or in writing to the amount of commodities, services, or related items HCDE will use during the Term of the Agreement.

7.34 Records Retention

Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all goods and/or services provided by Vendor to HCDE under this Agreement. These records and accounts shall be retained by Vendor and made available for audit by HCDE for a period of not less than three (3) years from the date of completion of the services, receipt of the goods, or the date of the receipt by HCDE of Vendor's final invoice or claim for payment in connection with this Agreement, whichever is later. If an audit has been announced, Vendor shall retain its records and accounts until such audit has been completed.

When federal funds are expended by HCDE pursuant to this Contract, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

7.35 Right to Audit

HCDE, upon written notice, shall have the right to audit all of Vendor's records and accounts relating to this Agreement. Records subject to audit shall include, but are not limited to, records which may have a bearing on matters of interest to HCDE in connection with Vendor's work for HCDE and shall be open to inspection and subject to audit and/or reproduction by HCDE or its authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

- (a) Vendor's compliance with this Agreement and the requirements of the solicitation,
- (b) compliance with HCDE procurement policies and procedures,
- (c) compliance with provisions for computing billings to HCDE, and/or
- (d) any other matters related to this Agreement.

7.36 Safety

Vendor, its subcontractors, and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services under this Agreement, including, without limitation, those promulgated by HCDE and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Vendor shall comply with all other safety guidelines and standards as required by HCDE. Vendor shall indemnify and hold HCDE harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of Vendor's obligations under this provision.

7.37 Severability

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

7.38 Shipments

Vendor shall ship ordered products within seven (7) working days for available goods and within four (4) to six (6) weeks for special-order items after the receipt of the purchase order unless otherwise previously agreed to, in writing, by HCDE. If a product cannot be shipped within that timeframe, Vendor shall notify HCDE of the reasons why the product has not shipped and shall provide an estimated shipping date, if applicable. HCDE may cancel the order if the estimated shipping time is not acceptable to HCDE, in its sole discretion.

7.39 Subcontractors

If Vendor uses subcontractors in the performance of any part of this Agreement, Vendor shall be fully responsible to HCDE for all acts and omissions of the subcontractors just as Vendor is responsible for Vendor's own acts and omissions. Nothing in this Agreement shall create for the benefit of any such subcontractor any contractual relationship between HCDE and any such subcontractor, nor shall it create any obligation on the part of HCDE to pay or to see to the payment of any moneys due any such subcontractor except as may otherwise be required by law.

7.40 Taxes

HCDE is tax-exempt, and HCDE shall not pay taxes for goods and/or services provided under this Agreement. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Agreement, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. HCDE shall not be liable for any taxes resulting from this Agreement.

7.41 Tax Responsibilities of Vendor and Indemnification for Taxes

Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to their operation and any persons employed by Vendor and all subcontractors of Vendor. Vendor shall require all subcontractors to hold HCDE harmless from any responsibility for taxes, damages, and interest. If applicable, contributions required under federal, state, and/or local laws and regulations and any other costs including, but not limited to, transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation, shall be the sole responsibility of Vendor.

7.42 Termination of Contract

This Agreement shall remain in effect until (1) the Agreement expires by its terms or (2) the Agreement is terminated by mutual agreement of HCDE and Vendor. In the event of a breach or default of the Agreement and/or the procurement solicitation by Vendor, HCDE reserves the right to enforce the performance of the Agreement and/or the procurement solicitation in any manner prescribed by law or deemed to be in the best interest of HCDE. HCDE further reserves the right to terminate the Agreement immediately in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in this Agreement, the procurement solicitation, and/or a purchase or work order; (2) make any payments owed; or (3) otherwise perform in accordance with this Agreement and/or the procurement solicitation. HCDE also reserves the right to terminate the Agreement immediately, with written notice to Vendor, if HCDE believes, in its sole discretion, that it is in the best interest of HCDE to do so. Vendor agrees that HCDE shall not be liable for damages in the event that HCDE declares Vendor to be in default or breach of this Agreement and/or the procurement solicitation. Vendor further agrees that upon termination of the Agreement for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or vendor.

7.43 Title and Risk of Loss

Whenever HCDE is purchasing (and not leasing) an item under this Agreement, title and risk of loss shall pass upon the later of HCDE's acceptance of the item or payment of the applicable invoice.

All deliveries under this Agreement shall be delivered: **Freight Prepaid, F.O.B. Destination, Full Freight Allowed, Inside Delivery** and shall be included in all pricing in Vendor's proposal unless otherwise clearly stated in writing in Vendor's proposal.

7.44 Waiver

No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver, alteration, or modification of any of the provisions of this

Contract shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

7.45 Warranty

All goods and/or services provided by Vendor under this Agreement must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of HCDE's acceptance of the product and/or service or payment of the applicable invoice. Vendor warrants that all goods and/or services furnished under this Agreement shall conform in all respects to the terms of this Agreement, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the procurement solicitation issued by HCDE. In addition, Vendor warrants that goods and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Agreement or the solicitation procurement.

7.46 Website Support

Vendor agrees to cooperate with HCDE in publicizing contract particulars on HCDE's website. Vendor agrees to work with HCDE in updating and maintaining current information on Vendor's activities related to the Agreement on the website. Vendor agrees to provide an electronic version of its logo for use on HCDE's website upon request and provide other information as reasonably requested by HCDE to help ensure that HCDE's website is current and consistently updated.

7.47 Workforce

Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which shall be performed under this Agreement. Vendor, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on HCDE's property, nor may such workers be intoxicated or under the influence of alcohol or drugs on HCDE's property.